



Civil Resolution Tribunal

Date Issued: December 12, 2022.

File: SC-2022-002398

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shawyer v. Tottenham*, 2022 BCCRT 1330

BETWEEN:

STANLEY VINCENT SHAWYER

APPLICANT

AND:

SHAWN TOTTENHAM

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is a roommate dispute. The applicant, Stanley Vincent Shawyer, moved into a home leased by a third party landlord to the respondent, Shawn Tottenham, and Mr. Tottenham's wife or girlfriend, NN. Mr. Shawyer says Mr. Tottenham evicted them from the premises without notice and failed to return their personal belongings. Mr. Shawyer claims \$4,750 for the post-eviction rent they say they paid, a damage and

pet deposit, belongings damaged or not returned to them, loss of work, moving truck rental fees, storage fees, and “mental health issues.”

2. Mr. Tottenham says they did not require Mr. Shawyer to pay rent because Mr. Shawyer was only staying for a short time. Mr. Tottenham says they were entitled to evict Mr. Shawyer as they did, and they owe nothing.
3. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

4. These are the CRT’s formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute’s parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

8. The CRT does not generally take jurisdiction over residential tenancy disputes, because those decisions are within the jurisdiction of the Residential Tenancy Branch (RTB). However, the RTB refuses jurisdiction over roommate disputes like this one. For that reason, I find this dispute falls within the CRT's small claims jurisdiction.

ISSUES

9. The issues in this dispute are:
 - a. Whether Mr. Tottenham failed to provide adequate move-out notice, and if so whether Mr. Shawyer is entitled to damages for unused rent, a damage and pet deposit, loss of work, moving truck rental fees, storage fees, and mental health issues.
 - b. Whether Mr. Tottenham damaged or failed to return Mr. Shawyer's possessions, and if so, whether they owe Mr. Shawyer for the cost of repairing or replacing those possessions.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Shawyer must prove their claims on a balance of probabilities, meaning "more likely than not." I have read the parties' submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision. Mr. Shawyer had an opportunity to provide submissions in reply to Mr. Tottenham's submissions, but did not.

Was there adequate move-out notice, and if not, did it result in damages?

11. Mr. Tottenham and NN undisputedly leased their home from a landlord. The landlord is not a party to this CRT dispute. Mr. Tottenham says Mr. Shawyer was only staying with them for a couple of weeks. However, I find submitted text messages between the parties show that Mr. Shawyer began staying with Mr. Tottenham and NN on about November 15, 2021 for an indefinite period, and Mr. Tottenham evicted Mr. Shawyer on March 22, 2022. I find the parties were roommates. Mr. Tottenham also

says that Mr. Shawyer's girlfriend, KJ, was not welcome to stay. Contrary to this submission, I find the text messages show that KJ was often at the home, and always with Mr. Tottenham's permission.

12. There was no written rental or roommate agreement between the parties. Mr. Tottenham says Mr. Shawyer did not pay rent or a deposit. Mr. Shawyer says they paid Mr. Tottenham rent plus a damage and pet deposit. Specifically, Mr. Shawyer says they had paid rent up to the end of March 2022, and are entitled to a rent refund for the period from March 22 to 31, 2022, plus the damage and pet deposit.
13. However, Mr. Shawyer does not specify the cost of monthly rent, or the cost of the alleged half-month deposit. Mr. Shawyer also says they borrowed the deposit amount from their mother, ES. According to ES's written statement, she loaned Mr. Shawyer \$750 for the deposit. However, I find there is no documentary evidence showing that this transfer occurred, or that Mr. Shawyer used the money for a deposit. Mr. Shawyer submitted what they say was an e-transfer record showing "large sums of money around the first of the month." However, I find that untitled document only shows dates, sums of money, Mr. Tottenham's email address, the words "Landlord Completed," and little else. I find it is not clear from the document whether any of the sums shown were actually transferred to or from Mr. Tottenham, who made the alleged transfers to or from Mr. Tottenham, and what each alleged transfer was for.
14. I find submitted text messages show that on one occasion Mr. Shawyer agreed to transfer some money to Mr. Tottenham for rent due to the landlord. I find the text messages show this one transfer was consistent with the parties' irregular, informal sharing of household expenses other than electricity and cable TV bills, which I discuss below. I find that one payment toward Mr. Tottenham's rent does not show that Mr. Shawyer agreed to pay, or did pay, any regular rent to Mr. Tottenham.
15. Overall, I find none of the evidence shows Mr. Shawyer paid, or agreed to pay, a deposit or regular rent, including for March 2022. However, even though I find Mr. Shawyer's stay was largely rent-free, I find they did provide payments for their stay, because Mr. Shawyer undisputedly agreed to share the home's electricity and cable

TV bills with Mr. Tottenham. I find text messages show this payment agreement was specific enough to form a binding roommate contract between the parties.

16. On the evidence before me, I find the parties did not explicitly agree that Mr. Sawyer would be allowed to stay for a particular period of time, or that they would receive a specific amount of move-out notice. However, it is undisputed that Mr. Sawyer brought several large possessions to the home, including artworks and a mattress and other furniture. In the circumstances, including the binding roommate agreement and the multi-month length of their indefinite stay, I find it was an implied term of the parties' roommate agreement that Mr. Sawyer would move out at Mr. Tottenham's request after being given reasonable advance notice. I find providing a reasonable opportunity for Mr. Sawyer to move their possessions to a different location or to a storage facility would be sufficient notice under this implied term.
17. Although the parties were friends when Mr. Sawyer moved in, repeated disputes arose, often between NN and KJ, and about home care and bill payment. During a March 22, 2022 argument, Mr. Tottenham texted while Mr. Sawyer was away from home, and told Mr. Sawyer to move out. Mr. Tottenham said Mr. Sawyer and their representatives were not allowed to enter the home or to retrieve any possessions until Mr. Sawyer paid money toward alleged electricity charges. After the parties received mediation assistance from the police, Mr. Tottenham put Mr. Sawyer's possessions in a covered outdoor garage on March 27, 2022 and Mr. Sawyer's representatives picked them up.
18. Mr. Sawyer says that it was unreasonable to evict them with no notice. Mr. Tottenham says Mr. Sawyer stole from them, but I find the evidence does not show there was a theft. In the circumstances, I find that evicting Mr. Sawyer with no notice provided no opportunity for Mr. Sawyer to move their possessions to a new location, was not reasonable, and was a breach of the parties' roommate agreement.
19. The key question is, did this lack of reasonable notice result in Mr. Sawyer suffering the claimed losses or damage?

20. I found above that the evidence does not show Mr. Shawyer paid any rent for March 2022 or for a damage and pet deposit. So, I dismiss this aspect of Mr. Shawyer's claim.
21. Mr. Shawyer also says they had to rent a moving truck and a storage locker for their possessions. Mr. Shawyer does not indicate how much they allegedly paid for those things. They also do not comment on whether they would have needed to rent those items even if Mr. Tottenham had provided adequate move-out notice. A submitted rental contract shows that a truck was rented to a different person, and not Mr. Shawyer. Further, nothing before me shows the total truck rental fee or who paid it. Mr. Shawyer also says the storage locker was only open during regular business hours, so they had difficulty accessing their belongings due to work. However, I find the submitted evidence does not show the storage locker's hours, Mr. Shawyer's work hours, or whether Mr. Shawyer rented a storage locker at all.
22. For the above reasons, I find none of the evidence shows that Mr. Shawyer incurred any rental truck or storage locker costs, or the amounts of those alleged costs. Mr. Shawyer also submitted a gas receipt, but I find the evidence does not adequately show who purchased the gas or for what purpose. So, I decline to order reimbursement of any rental truck or storage locker costs.
23. Mr. Shawyer also says they lost work because of the eviction. I find Mr. Shawyer's submitted calculations allege that they missed 5 days of work worth a total of \$1,200. However, Mr. Shawyer does not adequately explain why they were unable to attend work due to the early eviction. There is also no documentary evidence showing that Mr. Shawyer was employed at the time of the eviction, that they missed scheduled work, or what their rate of pay was. So, I decline to order any damages for lost wages.
24. Mr. Shawyer also claims an unspecified amount for mental health issues. Mr. Shawyer does not clearly explain what those issues were, but I infer from the submissions that they were stress and anxiety from the eviction and its surrounding circumstances. To receive damages for stress and anxiety, Mr. Shawyer must prove those conditions were more than minor and transient, and were a serious and

prolonged mental disturbance beyond the level of ordinary annoyances, anxieties, and fears (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 and *Saadati v. Moorhead*, 2017 SCC 28). Here, although I find the early eviction was likely stressful, I find Mr. Shawyer did not submit evidence showing that they suffered serious and prolonged stress and anxiety, and in particular submitted no medical evidence. So, I find any stress and anxiety damages are unproven, and I decline to order them.

Did Mr. Tottenham damage or fail to return Mr. Shawyer's possessions?

25. Mr. Shawyer says that Mr. Tottenham damaged or failed to return some of Mr. Shawyer's possessions. I find Mr. Shawyer does not clearly describe all of the allegedly damaged or missing items, or what each cost to replace or repair.
26. First, I find Mr. Shawyer does not adequately identify which of their possessions were missing, other than a designer baseball cap. Mr. Shawyer says they saw Mr. Tottenham wearing it at one point, without further detail or explanation. Having weighed the evidence, I find it is not sufficient to prove that Mr. Tottenham possessed the hat and did not return it. I find the evidence before me does not show that Mr. Tottenham failed to return any specific items to Mr. Shawyer.
27. Turning to alleged damage, Mr. Shawyer also says that Mr. Tottenham broke their framed dragon artwork, as shown in a submitted photo from the eviction date. A February 14, 2022 photo of the artwork shows it on a wall in the home, but due to poor image quality I cannot determine whether the artwork was already broken at that time. I find the evidence is insufficient to show that Mr. Tottenham broke Mr. Shawyer's framed dragon.
28. I find the evidence also does not show that Mr. Tottenham broke Mr. Shawyer's dragon ashtray, because it is not clear whether the damage was pre-existing or whether Mr. Tottenham caused it. Finally, Mr. Shawyer does not comment on a mattress that ES says Mr. Shawyer's representatives left behind at the covered garage because it was unknown how long it had been outside. I find the evidence

does not show that Mr. Tottenham damaged the mattress, by leaving it in the garage or otherwise.

29. Overall, I find the evidence before me does not show that Mr. Tottenham damaged or failed to return any of Mr. Shawyer's possessions.

30. For the above reasons, I dismiss Mr. Shawyer's claim for \$4,750.

CRT Fees and Expenses

31. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. However, neither party paid any CRT fees nor claimed any CRT dispute-related expenses. So, I order no reimbursements.

ORDER

32. I dismiss Mr. Shawyer's claim, and this dispute.

Chad McCarthy, Tribunal Member